UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA, New York, N.Y.

v. S1 09 Cr. 0666(DLC)

GARY GELMAN,

Defendant.

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March 18, 2014
3:51 p.m.

Before:

HON. DENISE COTE,

District Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
BY: BRIAN BLAIS
Assistant United States Attorney

SALVATORE E. STRAZZULLO
Attorney for Defendant

THE CLERK: United States of America versus Gary Gelman.

Is the government ready to proceed?

MR. BLAIS: Yes. Good afternoon, your Honor. Brian Blais for the government.

THE CLERK: And for the Defendant Gelman, are you ready to proceed?

MR. STRAZZULLO: Yes, your Honor. Sal Strazzullo for defendant Mr. Gelman.

Good afternoon, your Honor.

THE COURT: Good afternoon.

I'll take a report from the government.

MR. BLAIS: Yes, your Honor.

There was a complaint issued in this matter on April 30, 2009, and an indictment was filed on July 1, 2009 and then a first superseding indictment that was filed on July 7th of 2009.

At the time that the complaint was filed in April of 2009, this particular defendant was traveling in the Ukraine. Mr. Gelman is a United States citizen and he does have family located here in the United States. And at the time the complaint was filed he was in the Ukraine and made the decision to stay and remain in the Ukraine, and he has been in the Ukraine for the last five years.

Approximately two weeks ago, Mr. Gelman, through his counsel, reached out to our office and expressed a desire to surrender -- to return to the United States and surrender. We learned through his counsel of his flight arrangements, and he was arrested when he landed at JFK Airport yesterday at approximately 1:30.

So that's the status and that's why we are here today.

In terms of where we proceed from here, we obviously need to arraign the defendant on the Indictment and go through the bail process. But in terms of where we go from here, in terms of discovery in this matter, there is -- it is a relatively voluminous amount of discovery. There are approximately 3500 pages of materials that were seized from the offices of AR Capital, which is the entity that is at issue in the Indictment. Those were seized pursuant to a search warrant. In addition, there are approximately 1500 pages of documents provided by authorities in the Ukraine and Lithuania in response to various MLAP requests.

Then, finally, there are several CDs containing various materials, including bank records and other records of the entity in question, AR Capital, various SEC documents, including the depositions of various principals of AR Capital.

So that's a general sense of what the discovery contains.

At this point, we are not -- the government is not in possession of the discovery at this point in time. We have ordered the materials from records. I am hopeful that those materials will have been maintained in good order. And to the extent they were, we will be able to produce those materials within several days from now. It is simply a matter of copying them. To the extent those materials have not been maintained in good order, we will obviously have to spend some time collating materials from various places. I am hopeful, under any circumstance, that we will be able to produce discovery within two weeks. Certainly if the materials have been maintained in good order, it should be significantly sooner than that; it would just be a matter of copying the materials.

THE COURT: So why don't we say March 28th will be your production date, and if you have a problem with that, you will talk to defense counsel and, if necessary, write me.

MR. BLAIS: Certainly, your Honor. I think that is reasonable.

THE COURT: And besides the documents you have just described, what will be the principal sources of the government's evidence at trial?

MR. BLAIS: Beyond the material that we've just described, we do anticipate that there will be cooperating witnesses and as well as what I will characterize as victim witnesses, investors who invested in AR Capital and lost money as a result of the fraud that we allege occurred.

THE COURT: And how long will the trial take?

MR. BLAIS: It's hard to say. I think it is likely to happen within a week. To be safe, I would say no more than two weeks. But at this point, you know, in the position that I am in, having not yet reviewed the discovery materials, I am only operating off of a discovery letter and having not spoken to the witnesses at this point, it is hard to give an exact estimate. But I think based on what I know to date, it shouldn't last more than two weeks, although I think one week is probably realistic.

THE COURT: Excuse me one second.

(Pause)

So the codefendants each pleaded?

MR. BLAIS: That is correct, your Honor. There are three codefendants and all have pled guilty in this matter.

And then with respect to other scheduling matters, it is the government's understanding, after speaking Mr. Strazzullo, that his client does wish to stand on his speedy trial rights and to ask for a trial date within the 70 days provided for in the statute.

We would request, given the nature of why we're here today, that any trial date be toward the end of that 70-day period. We, obviously, have been prejudiced by the absence of the defendant, have to reengage with witnesses, etc. So we would ask for a trial date that is as close to the end of that 70-day period as possible. By my math, I believe 70 days from today is May 27th.

THE COURT: That's, I think, the day after Memorial Day.

MR. BLAIS: I think that's correct, your Honor.

To the extent it is amenable in your Honor's calendar, we would certainly be prepared to begin the week before that, which I believe would be the 19th of May, if that is amenable.

THE COURT: Any objection, Mr. Strazzullo, to setting this case down for trial May 27th, the day after Memorial Day?

MR. STRAZZULLO: No, your Honor. None whatsoever.

THE COURT: So we'll have motions due April 18, opposition April 25. If the defendant wishes to bring motions earlier than that, you should just discuss it with the government and send me a letter.

MR. STRAZZULLO: Yes, your Honor.

THE COURT: OK. So, Mr. Gelman, please stand.

Have you received a copy of the Indictment? It bears the number S1 09 Cr. 666.

THE DEFENDANT: Yes.

THE COURT: Do you wish me to read it to you?

THE DEFENDANT: No.

THE COURT: How do you plead, guilty or not guilty?

THE DEFENDANT: Not guilty.

THE COURT: You may be seated.

Mr. Gelman, I understand this is your first appearance before a judicial officer. So please stand again. I am going to advise you of certain rights.

You have the right to remain silent. You are not required to make any statements. Anything you do say can be used against you. Even if you have already made statements to the authorities, you need not make any further statements.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: You have the right to be represented by counsel during this court proceeding, any future court proceedings and any time you are questioned by authorities.

If you cannot afford an attorney, I will appoint an attorney to represent you.

Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, I've scheduled the trial for May 27th. This is a firm trial date. The trial will begin on that date. If you want to retain different counsel or if at any time you become unable to pay counsel, to afford counsel, and wish me to appoint someone to represent you, you must decide that sooner rather than later because I will not move the trial date.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: OK. You may be seated.

I have just looked at the Pretrial Services' report. I am searching for a date on the report -- oh, here. March 18th.

Have you seen it, Mr. Strazzullo?

MR. STRAZZULLO: Yes, I have, your Honor.

THE COURT: OK. And I understand we need to address bail.

Is the defendant consenting to remand?

MR. STRAZZULLO: Yes, your Honor, with a future intention, without prejudice, for a bail application with reservation of his rights, your Honor.

THE COURT: Fine.

(Pause)

So let's talk about the Speedy Trial Act. Any objection to excluding time from today until our trial date?

MR. STRAZZULLO: No, your Honor.

THE COURT: OK. Well, I'm not sure I should be doing that. There is certainly consent on the record to our trial date of May 27th.

MR. STRAZZULLO: Yes.

THE COURT: And to the extent any exclusion was required in order to create a period under the Speedy Trial Act to have a timely trial, I understand that the defendant is consenting to that exclusion. Am I right?

MR. STRAZZULLO: Your Honor, depending on what the exclusion is and in regards to the time that would be excluded under the Speedy Trial Act.

THE COURT: OK. So --

MR. STRAZZULLO: At this time I don't really foresee anything, your Honor.

THE COURT: Right. But let me make sure we are on the same wavelength here.

MR. STRAZZULLO: Yes.

THE COURT: There is a consent to a trial on May 27th.

MR. STRAZZULLO: Yes.

THE COURT: And it is my understanding the defendant wants a trial within the time stipulated or required by the Speedy Trial Act without any exclusions. And I don't intend to make any exclusions to extend the time other than to this extent: If we've calculated the clock wrong by a day or two so that our trial date of May 27th needs an exclusion of a few days to make it a timely trial under the Speedy Trial Act, I understand there is no objection for that purpose. Am I right?

MR. STRAZZULLO: Yes, your Honor. Yes.

THE COURT: OK. Good. Then I am not going to make any further exclusion. The defendant is standing on his rights, as he is entitled to, under the Speedy Trial Act, and through the conference we have had today we've worked to get him that speedy trial.

And we are looking at Memorial Day weekend and a calculation of 70 days here or there, and we think we've achieved that. But just to be extra cautious, I am making any small exclusion that would be required to make this a timely trial under the Speedy Trial Act, finding that that small adjustment is in the interest of justice and outweighs the best interests of the defendant and the public in a speedy trial pursuant to Title 18, United States Code, Section 3161(h)(7)(A).

And, obviously, the government has to retrieve the documents from deep storage and pull together its case. The defendant needs time to review the discovery materials. He needs time to consult with his attorney about whether to seek a disposition of this trial or not. And if he wishes a disposition, to negotiate that with the government.

Alternatively, if he decides he does want to proceed to trial, his attorney needs time to consider whether any motions are appropriate here. They need to be resolved. And everyone needs an opportunity to prepare for trial.

MR. STRAZZULLO: Absolutely, your Honor.

THE COURT: Good. Good.

So, Mr. Blais, is there anything else that we need to do here?

MR. BLAIS: Nothing I can think of, your Honor.

THE COURT: And from your point of view, Mr. Strazzullo, is there anything that needs to be done?

MR. STRAZZULLO: I just want to clarify the record a bit, your Honor. I just would like for it to be on the record that it has been now well over a year that I have had contact with the Assistant United States Attorney, Mr. Goldman, Daniel Goldman, regarding his surrender and negotiating, you know, with the consulate over in Kiev, the Ukraine, to get him back here and putting together, you know, the plan. So it's been -- I know Mr. Blais has just gone on vacation a few weeks. Just to clarify the record, it has been well over a year that I have contacted the United States Attorney's office regarding his surrender.

THE COURT: Thank you very much.

MR. STRAZZULLO: Thank you, Judge.

THE COURT: Yes. Thank you, all.

THE CLERK: All rise.

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